

REMARKS

Claims 1-32 were originally presented in the subject application. Claims 33-38 were added in a Preliminary Amendment dated July 9, 2004, and claims 1, 7, 14, 19 and 27 were amended in a Supplemental Preliminary Amendment dated August 9, 2004. Claims 1, 14, 27, 33, 35 and 37 were amended in a Response dated June 15, 2006. Claims 1, 11, 14 and 27 were amended, and claims 7, 19, 33, 35 and 37 cancelled without prejudice, in a Response dated October 19, 2006. Claims 1, 14, and 27 have herein been amended, and claims 39-52 added, to more particularly point out and distinctly claim the subject invention. Therefore, claims 1-6, 8-18, 20-32, 34, 36, 38 and 39-52 remain in this case.

The addition of new matter has been scrupulously avoided. In that regard, support for the common amendments to independent claims 1 and 14 can be found in prior claims 33 and 35, and in the specification at, for example, numbered paragraphs 0032-0033. Support for the amendment to claim 27 can be found, for example, in the prior version thereof. Support for the addition of claims 39-52 can be found throughout the specification and claims, for example, in numbered paragraphs 0032 and 0033.

Applicants greatly appreciate the telephonic interview with the Examiner on January 18, 2007. The amendments herein reflect the substance of that discussion. In particular, Applicants have amended independent claims 1 and 14 to include the dimensions recited in prior claims 33 and 35, respectively. Claim 27 has been amended to recite a step of deducing information, rather than the information being deducible. In addition, new claims 39-52 recite a method of making. Finally, Applicants agreed that the final wherein clause of claims 1 and 14 does not impart any structural limitations.

Applicants respectfully request entry of the enclosed amendments, and reconsideration and withdrawal of the various grounds of rejection.

35 U.S.C. §112 Rejection

The final Office Action rejected claims 1-38 under 35 U.S.C. §112, second paragraph, as allegedly indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. Applicants respectfully, but most strenuously, traverse this rejection as it relates to the amended claims.

More specifically, the Office Action alleged the following (denoted by “OA,” with response denoted by “Response”):

OA – In line 5 of both claims 1 and 14 “when present” is confusing. It would be clearer as –when the container is present–.

Response – Claims 1 and 14 have been amended as suggested.

OA – The last phrase of claims 1 and 14, “wherein information...”, does not impart any structural limitations to the apparatus claims.

Response – As noted above, Applicants have agreed that the last wherein clause of claims 1 and 14 does not impart structural limitations.

OA – Likewise in method claim 27, it is merely claimed that information “is deducible”, with no actual step of deducing any information.

Response – Applicants have amended claim 27 to recite a step of deducing.

OA – It is also noted that “sized to simulate”, bears little meaning as something can be simulated in larger or smaller scale and any facet can be simulated, such as electrical conduction through the containers.

Response – See the common amendments to claims 1 and 14, and new claims 39-52.

As amended, Applicant submit that claims 1-6, 8-18, 20-32, 34, 36 and 38, are sufficiently definite, and overcome the stated rejection.

35 U.S.C. §102 Rejection

The final Office Action rejected claims 1-4, 8, 9, 12-16, 20, 24-32, 34, 36 and 38 under 35 U.S.C. §102(b), as allegedly anticipated by Bender et al. (U.S. Patent No. 3,586,097). Applicants respectfully, but most strenuously, traverse this rejection as applied to the amended claims.

The Office Action noted on page 5 that “the subject matter in claims 33, 35 and 37 ... would have made the independent claims allowable.”

In response, Applicants have amended independent apparatus and system claims 1 and 14, respectively, to recite the substance of prior claims 33 and 35.

With regard to claim 27, Applicants submit it is a method claim, thus, the language regarding “sized to simulate” cannot be disregarded. Applicants submit that Bender et al. fails to disclose such sizing. In addition, Applicants submit Bender et al. fails to disclose the deducing limitation of amended claim 27.

Similarly, new method claims 39 and 44 recite spacing and sizing, respectively, to proportionally correspond to a slice of a larger bioproduct container for a larger-scale unit taken between freezing surfaces of the larger bioproduct container. Applicants submit these claims are patentable for at least these limitations.

In light of the above, Applicants submit that Bender et al. cannot anticipate, or even render obvious, any of claims 1, 14 or 27 (or new claims 39-52).

Allowable Subject Matter

The Office Action objected to claims 6, 11, 18 and 23 as depending from rejected base claims. However, the Office Action also indicated that these claims would be allowable if rewritten to overcome the Section 112 rejections, and to be in independent form, including all of the limitation of the relevant base claim and any intervening claims.

Applicants sincerely appreciate the indication of allowable subject matter. However, in light of the amendments and remarks above, Applicants decline at this time to so amend the noted claims. However, Applicants reserve the right to do so later in prosecution.

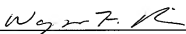
CONCLUSION

Applicants submit that the dependent claims are allowable for the same reasons as the independent claims from which they directly or ultimately depend, as well as for their additional limitations.

For all the above reasons, Applicants maintain that the claims of the subject application define patentable subject matter and earnestly request allowance of claims 1-6, 8-18, 20-32, 34, 36, 38 and 39-52.

If a telephone conference would be of assistance in advancing prosecution of the subject application, Applicants' undersigned attorney invites the Examiner to telephone him at the number provided.

Respectfully submitted,



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